

ALTEX OIL CORPORATION

IBLA 77-385

Decided August 31, 1977

Appeal from decision of the Utah State Office, Bureau of Land Management, requiring additional rental prior to issuance of noncompetitive oil and gas leases. U-35940, U-35942, U-35943, U-35944.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Rentals--Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

APPEARANCES: Cecil C. Wall, President of Altex Oil Corporation, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This is an appeal from four decisions of the Utah State Office, Bureau of Land Management (BLM), requiring payment of the advance rental for the first year of oil and gas leases at the rate of \$1 per acre. The rental rate was increased from 50 cents per acre to \$1 per acre, effective February 1, 1977, by an amendment to 43 CFR 3103.3-2, 43 FR 1032 (January 5, 1977).

Appellant filed four over-the-counter noncompetitive oil and gas lease offers with the Utah State Office in November 1976. It submitted the first year's rental at 50 cents per acre with each offer as required by 43 CFR 3103.3-1. No lease was issued on any of the offers prior to February 1, 1977. Appellant was notified during May 1977 to submit additional rental due to the rate increase. It then filed this appeal.

Appellant protests the rental increase, claiming the applications should have been routinely issued within 30 days, and certainly before January 1, 1977. It asserts any delay in the issuance of the leases was caused solely by BLM.

[1] In Casey C. Jansen, 30 IBLA 134 (1977), one of the appellants had filed a noncompetitive over-the-counter lease in October 1976, and when the lease was issued after February 1, 1977, he was required to pay the increased rental rate of \$1 per acre. The Board has also answered the issue raised here in Raymond N. Joeckel, 29 IBLA 170 (1977). Joeckel has since been reaffirmed in XO Exploration, Inc., 30 IBLA 209 (1977); Casey C. Jansen, *supra*; and Milton J. Lebsack, 29 IBLA 316 (1977). These decisions hold that rental for oil and gas leases issued after February 1, 1977, must be paid according to the increased rate, regardless of when the offer was submitted to BLM. As the Secretary of the Interior stated: 1/

Although it might appear that applicants for oil and gas leases pending prior to February 1, 1977, have been treated unfairly under the Amended Regulations, it is important to note that there is an established precedent in the Department, reinforced by Court decisions, which dictates that no rights or responsibilities attach to a lease applicant until the lease is actually issued.

See also 43 CFR 1810.3. Therefore, appellants were properly required to pay the increased rental.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

1/ Excerpt from letter of February 1, 1977, by Secretary Cecil B. Andrus to United States Senators Mike Gravel, James McClure, Paul Laxalt, Orrin Hatch, John Melcher, Jake Garn and Howard Cannon and quoted in Milton J. Lebsack, *supra*.

